

## **LEASE AGREEMENT**

**THIS LEASE AGREEMENT**, made and entered into between SUCCESSFUL OFFEROR, \_\_\_\_\_, "LESSOR"; and the **COMMONWEALTH OF KENTUCKY**, acting by and through Lori H. Flanery, Secretary of the Finance and Administration Cabinet, Room #301, Capitol Annex, Frankfort, KY 40601, the "COMMONWEALTH" or "LESSEE;"

### **WITNESSETH:**

WHEREAS, the Finance and Administration Cabinet has determined that construction under a "built-to-suit" Lease Agreement as authorized by K.R.S. 56.8161 to 56.8179 and 56.820, of a minimum 334,000 square foot office building and potentially, minimum 7,710 gross square foot laboratory building to be located within the City limits of Frankfort, would promote the public purposes of the Finance and Administration Cabinet, and would otherwise serve the best interests of the Commonwealth of Kentucky; and,

WHEREAS, the Department of Facilities Management submitted to the Secretary of the Finance and Administration Cabinet a request that the Finance and Administration Cabinet advertise for proposals as authorized by K.R.S. 56.8161, et seq., for construction of such a facility within Frankfort's city limits; and,

WHEREAS, the Secretary of Finance, pursuant to K.R.S. 56.8161, approved the request of the Department of Facilities Management and solicited proposals for construction of the needed office and/or laboratory space; and,

WHEREAS, the Governor, pursuant to K.R.S. 56.8161, approved the request of the Department of Facilities Management and the determination of the Secretary of the Finance and Administration Cabinet by Determination and Finding dated June 5, 2014, whereupon, the Finance and Administration Cabinet advertised for proposals from interested developers; and,

WHEREAS, it was determined upon review of proposals received in response to the request for proposals that the proposal submitted by Lessor was the best proposal received and it was thereupon determined that it should be accepted;

NOW, THEREFORE, for and in consideration of the foregoing and other good and valuable consideration, the receipt of which is hereby acknowledged by the parties, it is hereby understood and agreed by and between the Lessor and the Lessee as follows:

This Lease Agreement is entered into between the parties hereto pursuant to K.R.S. 56.820, the provisions of which, in effect on the date hereof, are incorporated herein and made a part of this Lease Agreement by reference. This Lease Agreement is also made and entered into in conformity with of the terms, conditions and stipulations contained in R.F.P. No. 082514, " CONVEYANCE OF COMMONWEALTH LAND\* TO PRIVATE ENTITY TO FINANCE, DESIGN, DEVELOP, CONSTRUCT, MAINTAIN, OPERATE, AND LEASE TO THE COMMONWEALTH AN OFFICE BUILDING ACCOMMODATING 1,300 EMPLOYEES (MINIMUM 334,000 GSF) AND RELATED INFRASTRUCTURE, AT SOWER BOULEVARD, FRANKFORT, KENTUCKY," as amended or supplemented by three amendments thereto, issued by the Department for Facilities Management and Support Services, Finance and Administration Cabinet, Division of Contracting and Administration and Division of Real Properties, incorporated herein by reference, the same as if copied verbatim herein;

1. The Lessor hereby acknowledges that the Lessee has simultaneously herewith delivered a Deed of Conveyance to the following described property, containing 33.998 acres, including improvements thereon, located in Franklin County, Kentucky, to wit:

[Legal Description]

Access to the above described Tract of land is by a Private Access Easement from the East-West Connector (KY Highway 670) to Sower Boulevard, and is described as follows:

## **GRANTED PRIVATE ACCESS EASEMENT**

### **Centerline Description**

[Legal Description]

In addition to the above described Private Access Easement, a 100 foot wide Private Access Easement is hereby granted along the entire outside perimeter of the \_\_\_\_\_ Acre Tract hereinabove described and is contiguous to the above described Private Access Easement.

The above described property is shown on the Plat of \_\_\_\_\_ prepared by \_\_\_\_\_, said Plat dated the \_\_\_\_ day of \_\_\_\_\_, 2014, attached hereto and made a part hereof as Exhibit \_\_\_\_.

The property herein conveyed being the same property as that conveyed to the Commonwealth of Kentucky, from the City of Frankfort, Grantor, by Deed dated \_\_\_\_\_, which is recorded in Deed Book 372, Page 613, in the Franklin Clerk's Office, Frankfort, KY. (if Project is constructed on offered state property)

2. As required by the terms and conditions of R.F.P. No. 082514, and as provided by K.R.S. 56.820, the Lessor covenants and agrees that it shall construct these improvements and appurtenant facilities on said tract in strict compliance with the terms of the afore-mentioned R.F.P and Lessor's proposal in response thereto, and hereby leases, lets and demises said improvements and appurtenances to the Lessee for the term as set forth in Paragraph 4 of this Lease Agreement. At the end of the construction period (June, 2016), the Lessor may reconvey at no cost to the Commonwealth that unused portion of the 33.988 acres by deed of conveyance with general warranty.

3. The initial term of this lease shall commence on the date the building to be constructed on the above described property is accepted for occupancy by the Commonwealth, but not later than thirty (30) days after the Lessor's architect has certified that construction of the building has been completed, and shall extend through the 30th day of June of the second year of the then current fiscal biennium of the Commonwealth of

Kentucky. The Lessee shall have successive options to extend the term of the lease for two (2) year periods after expiration of the initial lease term until the lease has been extended for a total of \_\_\_\_\_ years from the effective date, by which time the total cost of erection of the building and appurtenances shall be fully amortized. The options to extend the Lease shall be deemed exercised unless the Lessee gives the Lessor written notice not later than May 1, prior to the expiration of the initial or the then current biennial extension term that the option to extend will not be exercised for the next ensuing biennial period. If the option to extend the Lease is not exercised, Lessee shall be deemed to have exercised its option to purchase the Leased Premises pursuant to Section 4. During the initial term of the lease agreement or any renewal thereof, title to the land, all building(s), structures, additions, changes, and other improvements, including fixtures, shall remain with the Lessor. All building(s), structures, additions, changes and other improvements, including fixtures, erected or placed on the leased premises, shall remain thereon. At the expiration or termination of the lease agreement, any and all such land, building(s), structures, additions, changes and other improvements shall be conveyed by the Lessor to the Lessee. Prior to conveyance of the property to the Lessee, both parties shall complete a walk-through inspection of the building(s) and property to determine what, if any, repairs, etc. must be completed by the Lessor prior to conveyance of the property to the Lessee. Additionally, at the end of the lease term and prior to conveyance of the improved property, the Lessee expects the Lessor to provide to the Lessee a minimum five year warranty on the roof of the building(s).

4. The Lessor hereby grants to the Lessee an option to purchase the Leased Premises at the expiration of the initial or any subsequent extension term for a price which shall be the balance of the total cost of erection of the building and appurtenances not amortized by the payments of rent previously made by the Lessee (for purposes of

clarification, such price is set forth in the amortization schedule, attached hereto and made a part hereof as Exhibit A, under the heading "Early Buy-out Option" for the corresponding month that such option is exercised). Such option must be exercised, if at all, on or before May 1 of the year in which the initial or then current biennial term is set to expire. In the event of the exercise of the option to purchase, or in the event that the lease is extended for the full number of years contemplated by and provided for in Paragraph 3, the Lessor shall convey the Leased Premises to the Lessee in fee simple with covenant of general warranty of title, free of any liens or encumbrances arising since the date that Lessor acquired the Leased Premises from Lessee.

5. Subject to the provisions in Paragraph 4, above, the Lessee agrees to pay annual rent for the Leased Premises during the period commencing with the effective date of this Lease Agreement, through June 30, 20\_\_\_\_, of \$\_\_\_\_\_ per square foot, or \$\_\_\_\_\_ annually including amortization cost for long-term financing. The \$\_\_\_\_\_ shall be the "Total Annual Lease Cost" during such period or periods. The rent shall be paid in advance in quarterly installments and shall be sent by United States Mail, first class postage paid, in time to reach the Lessor at its above mailing address not later than the 15th day of each month after the commencement of the initial lease term.

6. The Lessor shall not be authorized to convey the Leased Premises to a third party except with the written consent of the Commissioner of the Department of Facilities Management and the Secretary of the Finance and Administration Cabinet. Such consent shall not be required, however, in the case of a mortgage of the property by the Lessor for the purpose of obtaining financing for construction of the improvements; provided, that any such mortgage shall contain a provision authorizing the Commonwealth to pay off the mortgage or otherwise cure the Lessor's default in its performance of the terms and conditions of any mortgage. In connection with any such mortgage, Lessee shall execute a

Subordination, Non-Disturbance and Attornment Agreement in the form previously provided to Lessee by Lessor's lender.

7. The Lessor shall maintain the Leased Premises in good repair and tenantable condition, for the life of this Lease Agreement, to include but not be limited to the "Maintenance and Repair Requirements, attached hereto and made a part hereof as "Exhibit \_\_\_\_," casualty insurance for the building and site required to be maintained and paid for by Lessor pursuant to Section 8, snow removal, landscape, and lawn care. The Lessee shall pay all costs and expenses associated with utilities for the Leased Premises, and janitorial services (including pest control), fixtures/furnishings for the structure, non-building systems equipment, insurance of the contents of the building (renter's insurance).

8. The Lessor shall keep the Leased Premises insured for its full insurable value against damage or destruction by fire, windstorm, earthquake or other casualty through a solvent insurance company authorized to do business in Kentucky. All such insurance coverage shall name the Commonwealth as additional insured. If the Leased Premises are partially destroyed or damaged by fire or other casualty rendering not more than twenty five percent (25%) of the Leased Premises either untenable or undesirable for habitation by the Lessee or its sub-lessees, Lessee may suspend this Lease by giving written notice to the Lessor within 15 days after such partial destruction or damage, and, if so suspended, no rent shall accrue to the Lessor after the date of such partial destruction or damage until after such damage is repaired and Leased Premises are considered tenantable by the Commonwealth. If the Leased Premises are destroyed or damaged by fire or other casualty rendering more than twenty five percent (25%) of the Leased Premises either untenable or undesirable for habitation by the Lessee or its sub-lessees, Lessee may terminate this Lease by giving written notice to the Lessor within 15 days after such destruction or damage, and, if so terminated, no rent shall accrue to the Lessor after the date of such

termination. Upon such termination, Lessee shall exercise its option to purchase the Leased Premises and shall pay to Lessor the purchase price calculated in accordance with Section 5; provided, that any proceeds payable under Lessor's casualty insurance policy shall be paid to Lessor and credited against the purchase price; provided, further, that if the proceeds payable under Lessor's casualty insurance policy exceed the purchase price, Lessee shall be entitled to retain such excess. Lessee shall maintain and pay for liability insurance with respect to the Leased Premises in amounts customary for Lessee's activities conducted thereon. All such insurance coverage shall name Lessor as additional insured.

9. The Lessor agrees that it shall commence construction of the improvements with delivery of this Lease Agreement by the Lessee. The Lessee agrees to an extension of time to commence construction where the cause for delay is beyond the control of the Lessor. After beginning construction, the Lessor will diligently prosecute construction of the building to completion according to the requirements of R.F.P. No. 082514, and the construction schedule associated therewith. The rights and duties of the Lessor and Lessee with respect to construction of the improvements, including provisions addressing liquidated damages should the construction schedule not be met, shall be governed by R.F.P. No. 082514.

10. It is the intention of the parties hereto that this Lease Agreement shall not supersede, but shall be complementary to the terms and conditions of R.F.P. No. 082514, and this Lease Agreement shall be read in conjunction with such R.F.P. In the event of a conflict between a provision of this Lease Agreement and a provision of the R.F.P., this Lease Agreement shall prevail. If any provision of this Lease Agreement shall be held by a Court of competent jurisdiction to conflict with or be invalid under any statute or principle of law in effect in this Commonwealth, such Lease provision shall be construed so as to harmonize with the requirements of the statute or principle of law if it is possible to do so,

but if that cannot be done, the invalidity of such provision shall not affect the remainder of this Lease Agreement and this Lease Agreement shall be construed and enforced as if it did not contain such provision.

11. Notices by the Lessor to the Lessee, and by the Lessee to the Lessor, shall be delivered by the means set forth in the R.F.P. Notices to the Lessor shall be addressed to OFFEROR, at the address shown above, or to such other mailing address as the Lessor may hereafter indicate in writing. Notices to the Lessee shall be addressed to the Secretary, Finance and Administration Cabinet, Commonwealth of Kentucky, Room 383 Capitol Annex Building, Frankfort, Kentucky 40601.

14. If the Lessor materially defaults in the provisions of this Lease Agreement and does not cure the same within sixty (60) days written notice from Lessee, the Lessee may at any time after the expiration of such sixty (60) day period and while such default continues, upon thirty (30) days written notice delivered to the Lessor, declare the term of this Lease Agreement ended and enter into possession of the Leased Premises. Upon such instance of default and termination of the Lease Agreement, the Lessor shall peacefully surrender possession and execute a General Warranty Deed to the Leased Premises in favor of the Lessee.

15. The Lessor, the contractor, as that term is defined in K.R.S 45A.030(9) agrees that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the



contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service.

16. The parties hereby acknowledge that Lessee has the right to terminate this Lease Agreement upon thirty (30) days written notice pursuant to the provisions contained in K.R.S. 56.806(6). The parties acknowledge that this right is in addition to Lessee's right to purchase the Leased Premises pursuant to Section 5. In the event the Lessee exercises its rights under K.R.S. 56.806(6), it shall pay to the Lessor the purchase price calculated in accordance with Section 5. The parties further acknowledge that this Lease Agreement is not subject to K.R.S 56.806(4) or (5).

IN TESTIMONY WHEREOF, the Lessor and the Lessee have subscribed hereto for convenience as of the date hereinbefore set forth but actually on the dates shown in the notary's acknowledgement of their respective signatures.

LESSOR:

SUCCESSFUL OFFEROR

By: \_\_\_\_\_

COMMONWEALTH OF KENTUCKY

COUNTY OF \_\_\_\_\_

I, the undersigned, certify that the foregoing Lease Agreement, was produced before me in my said County and State and duly acknowledged and sworn to by \_\_\_\_\_, as Lessor, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE, KY

REVIEWED AS TO FORM &  
LEGALITY AND  
Prepared by:

LESSEE:  
  
APPROVED:

\_\_\_\_\_  
Patrick McGee, Attorney  
Finance & Administration Cabinet  
Room 392, Capitol Annex  
702 Capitol Avenue  
Frankfort, Kentucky 40601  
502-564-6660

\_\_\_\_\_  
Lori H. Flanery, Secretary  
Finance & Administration Cabinet

COMMONWEALTH OF KENTUCKY

COUNTY OF FRANKLIN

I, the undersigned, certify that the foregoing Lease Agreement, was produced before me in my said County and State and duly acknowledged and sworn to by Lori H. Flanery, Secretary of the Finance and Administration Cabinet, as Lessee, on this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE AT LARGE, KY

EXAMINED:  
Counsel to Governor:

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APPROVED:  
COMMONWEALTH OF KENTUCKY:

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STEVEN L. BESHEAR, GOVERNOR